

## Appendix 8 – Protest Resolution Agreement

### FORM OF LANGUAGE TO BE INCLUDED IN THE BLM RECORD OF DECISION

The FEIS was available for a 30-day public review and protest period. The 30-day public review and protest period closed on 5 December 2012. The comments that were submitted on the Draft EIS and the Bureau's responses thereto are included in Appendix M to the Final EIS. The protests have been resolved by the Director or, as noted below, have been withdrawn by the protesting party. At the request of various interested organizations, the BLM met, in accordance with its policy (BLM Land Use Planning Handbook, Appendix E, p.6 (2005)) in an effort to resolve the protest issues raised by these groups.

As a result of these meetings, the Defenders of Wildlife, the Natural Resources Defense Council and the project applicant agreed to certain project conditions which were reduced to writing and presented to the BLM for inclusion in the BLM Preferred Alternative. These conditions require the project applicant to 1) develop and implement a desert kit fox management plan; 2) minimize grading and vegetation removal; 3) mitigate all Palen-Ford multi-species Wildlife Habitat Management Area lands located within the Project site at a ratio of 2:1; 4) agree to targeted land acquisitions and restoration to address connectivity concerns; 5) agree not to assert any water rights, to surface or groundwater, although they may use water as provided for in their ROW grant; 6) modify, adapt or initiate new project monitoring activities involving natural resources including but not limited to air, water and wildlife species that vary from or are in addition to those identified in the plan of development and/or right-of-way grant stipulations. These conditions are subject to limitations agreed upon by the parties.

According to the agreement among the project applicant and Defenders of Wildlife, the Natural Resources Defense Council, these and other agreed-upon terms have been incorporated into a Revised Plan of Development for the project. The BLM has analyzed these terms and has determined that they do not require BLM to supplement the FEIS prior to issuance of the Record of Decision. Further, the BLM has agreed to incorporate the language below regarding water rights and monitoring in the standard terms and conditions that are henceforth included in future right-of-way grants it issues for solar projects on public lands in California.

In addition to these agreements, the BLM has agreed to the following terms:

#### **A. Desert Kit Fox and American Badger.**

To avoid direct impacts to American badgers and desert kit fox, the applicant shall implement the following measures:

1. **Baseline Kit Fox Census and Population Health Survey:** A qualified mammalogist shall complete a baseline study of desert kit fox populations on the Project site and the anticipated relocation/receiving area(s) at least 60 days prior to initiation of construction activities. The study shall characterize the demographics (e.g., size, structure, and distribution) of the kit fox population on the site and receiving areas. Pending CDFW approval, the baseline survey shall include a testing component in which the researchers trap and test a representative subsample of the population for canine distemper, and

generally describe animal health on the site and receiving areas. The baseline kit fox census and health findings shall be summarized in a report that informs will be used to inform site management of kit foxes during preconstruction surveys. Alternately, the Applicant may coordinate with and fund studies by federal or State wildlife health officials (e.g., the CDFW Wildlife Investigations Lab) to establish baseline health conditions.

2. Prepare Desert Kit Fox Management Plan: At least 45 days prior to construction, the Applicant shall prepare a Desert Kit Fox Management Plan that: 1) incorporates baseline desert kit fox census and health survey findings into a cohesive management strategy that minimizes disease risk to kit fox populations; 2) provides a program for tagging, radio-tracking and monitoring of a subset of displaced kit foxes during the construction phase to understand how displacement affects regional kit fox populations; 3) specifically identifies preconstruction survey methods for kit foxes and large carnivores (e.g., badgers) in the Project area; 4) describes preconstruction and construction-phase relocation methods from the site, including the possibility for passive and active relocation from the site (and outlines identified CDFW permit and MOU requirements for active relocation), and; 5) coordinates survey findings prior to and during construction to meet the information needs of wildlife health officials in monitoring the health of kit fox populations. The Plan shall include contingency measures that would be performed if canine distemper were documented in the Project area or in potential relocation areas, and measures to address potential kit fox reoccupancy of the site (as documented at the Genesis site). The contents and requirements of the Plan shall be subject to review and approval by the BLM AO in consultation with USFWS and CDFG.
3. Implement Desert Kit Fox Management Plan: If canine distemper is not identified in the Project area or relocation areas during baseline surveys, the mitigation strategy may utilize passive means or active means with appropriate CDFG authorization to relocate kit foxes from the site. The approach below assumes that canine distemper is not detected during baseline surveys.
  - a. Pre-Construction Surveys: Biological Monitors shall conduct pre-construction surveys for desert kit fox and American badger no more than 30 days prior to initiation of construction activities. Surveys shall also consider the potential presence of active dens within 100 feet of the project boundary (including utility corridors and access roads) and shall be performed for each phase of construction. If dens are detected each den shall be classified as inactive, potentially active, or definitely active.
  - b. Inactive dens that would be directly impacted by construction activities shall be excavated by hand and backfilled to prevent reuse by badgers or kit fox.
  - c. Potentially and definitely active dens that would be directly impacted by construction activities shall be monitored by the Biological Monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance.

- d. If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated and backfilled by hand.
- e. If tracks are observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage the badger or kit fox from continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand to ensure that no badgers or kit fox are trapped in the den. BLM approval may be required prior to release of badgers on public lands.
- f. If an active natal den (a den with pups) is detected on the site, the BLM AO and CDFW shall be contacted within 24 hours to determine the appropriate course of action to minimize the potential for animal harm or mortality. The course of action would depend on the age of the pups, location of the den on the site (e.g., is the den in a central area or in a perimeter location), status of the perimeter site fence (completed or not), and the pending construction activities proposed near the den. A 500-foot no-disturbance buffer shall be maintained around all active dens.
- g. The following measures are required to reduce the likelihood of distemper transmission:
  - i. No pets shall be allowed on the site prior to or during construction, with the possible exception of kit fox scat detection dogs during preconstruction surveys, and then only with prior CDFW approval;
  - ii. Any kit fox hazing activities that include the use of animal repellents such as coyote urine must be cleared through CDFW prior to use, and;
  - iii. Any sick or diseased kit fox, or documented kit fox mortality shall be reported to CDFW and the BLM AO within 24 hours of identification. If a dead kit fox is observed, it shall be retained and protected from scavengers until CDFW determines if the collection of necropsy samples is justified.

## **B. Soil Treatment.**

The applicant shall minimize grading and vegetation removal for the Project.

Site grading within the project site shall be localized in nature and limited to major access roads, inverter pad locations, lay down areas, tracker locations and ancillary facilities (including parking area, material storage, operations and maintenance building and switchyard).

With regard to CDFW jurisdictional streams, localized grading will be required to allow vehicle access when the slope is greater than 1 percent at the boundaries of delineated CDFW jurisdictional streambeds and the streambed is deeper than 12 inches (i.e., too steep for vehicles to traverse unassisted). Additionally, localized grading will be used where foundations or

roads must be sited within streambeds. In all other instances, grading within CDFW jurisdictional streambeds shall be only occur when no other equally-sound method of engineering will allow development of the project at an equal or lesser cost than grading.

Excavation shall be limited to trenches for electrical conductors that connect the PV modules and the inverters to the switchyard. The PV modules would be electrically connected by wire harnesses and combiner boxes that would collect power from several rows of modules and feed the project's power conversion stations via direct current (DC) cables placed in underground covered trenches of an estimated 3 feet deep and from 1.5 to 2.5 feet wide.

Temporarily disturbed areas shall be revegetated.

**C. Compensatory WHMA Mitigation.** The applicant shall mitigate all Palen-Ford multi-species Wildlife Habitat Management Area lands located within the Project site at a ratio of 2:1, resulting in 46 acres of compensatory mitigation lands in addition to the number of acres of compensatory mitigation lands required of the Project by governmental agencies.

**D. Compensatory Mitigation – Land Availability and Total Ratio.** The holder shall acquire compensatory mitigation lands within the I-10 connectivity corridor (as identified in the biological opinion for the project) that constitute either (i) 1,800 acres, or (ii) if BLM approves a Project that requires less than 1,800 acres of compensatory mitigation lands, 100 percent of what is required under the Biological Opinion as adjusted for the smaller project. If the Project requires more than 1,800 total acres of mitigation land, the applicant agrees to use best efforts to acquire lands within Priority 1 or 2 desert tortoise connectivity lands within the NECO planning area, as identified in the Solar Energy Development PEIS, provided USFWS and CDFW confirm such lands satisfy the compensatory mitigation standards set forth in the biological opinion.

In response to concerns regarding connectivity for desert tortoise, the applicant shall use best efforts to acquire and restore lands within the Chuckwalla Valley to help maintain a connectivity corridor that is accessible to wildlife, and will support desert tortoise movement and occupancy.

**E. Water Rights.** The holder, its successors, heirs and assigns may not assert any claim to or interest in any water right to surface or groundwater associated with the project site, project construction, or operations, provided, however, that the applicant may use groundwater consistent with the terms and conditions of the project's right-of-way grant(s).

**F. Monitoring.** The holder, its successors, heirs, and assigns must comply with requests from BLM to modify, adapt or initiate new project monitoring activities involving natural resources including but not limited to air, water and wildlife species that vary from or are in addition to those identified in the plan of development and/or right-of-way grant stipulations. The holder agrees to adhere to the monitoring data standards identified by the BLM. Compliance with such requests will ensure that project monitoring activities involving natural resources support and are consistent with evolving standards and protocols identified by the BLM for long term monitoring of the impacts of the project on the natural resources of affected public lands. In accepting this right-of-way grant, the holder shall recognize the BLM and its assigns may exercise the United States' retained right to access the lands covered by the ROW grant in accordance with 43 C.F.R.

§ 2805.15(a) to, among other things, conduct long-term monitoring activities involving natural resources.

The holder must cooperate with BLM in making available to the public all project monitoring data involving natural resources that is submitted as a requirement of the plan of development, right-of-way grant, biological opinion, or in response to a request from the BLM. The monitoring data covered by this section do not qualify as trade secrets or as confidential data. For desert tortoise in particular, the holder will post on its project website within 10 business days of reporting due dates, all natural resource and desert tortoise monitoring data, including data regarding tortoises found during clearance activities, data about tortoise mortality after translocation and any other monitoring data about tortoises that the holder is required to provide pursuant to the requirements of the right-of-way and biological opinion or other requests of the BLM.

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The BLM has determined that the terms fall within the alternatives analyzed in the Final EIS, has accepted these agreed upon terms as part of the amended plan of development, and has incorporated into and will administer these terms as part of the right-of-way grant in accordance with 43 CFR 2805.12(i)(5), 2807.16, and 2807.17. The agreed upon conditions are not subject to amendment without the agreement of the applicant and Defenders of Wildlife and the Natural Resources Defense Council and only if approved by the BLM in accordance with 43 CFR 2807.20. Defenders of Wildlife and the Natural Resources Defense Council have withdrawn their protests.

**Defenders of Wildlife  
Natural Resources Defense Council**

March 1, 2013

***Via email to Jim\_Kenna@blm***

Jim Kenna, State Director  
United States Department of the Interior  
Bureau of Land Management  
2800 Cottage Way, Suite W-1623  
Sacramento, California 95825-1886

Re: Defenders of Wildlife and Natural Resources Defense Council - Withdraw of Protest  
for Desert Harvest Solar Project.

Dear Mr. Kenna:

We are writing to notify you that Defenders of Wildlife (Defenders) and the Natural Resources Defense Council (NRDC) signed an agreement with EDF Renewable Development (EDF), on March 1, 2013, regarding the proposed Desert Harvest Solar Project. As you know, the company is seeking a right of way for the installation of a solar generation facility on approximately 1,100 acres of Bureau of Land Management ("BLM") administered lands in Desert Center, California. The BLM proposed to amend the California Desert Conservation Plan to accommodate the Desert Harvest Solar Project and prepared an environmental impact statement. Pursuant to 43 C.F.R. § 1610.5-2, Defenders and NRDC, with Sierra Club, submitted a letter of protest to BLM's protest coordinator Brenda Williams on December 5, 2012, challenging the proposed amendment.

The agreement reached between EDF and Defenders of Wildlife and NRDC requires EDF to: 1) develop and implement a desert kit fox management plan; 2) minimize grading and vegetation removal; 3) mitigate for all the Palen-Ford multi-species Wildlife Habitat Management Area lands located within the Project site at a ratio of 2:1; 4) agree to targeted land acquisitions and restoration to address connectivity concerns; 5) agree not to assert any water rights, to surface or groundwater, although they may use water as provided for in their ROW grant; and 6) modify, adapt or initiate new project monitoring activities involving natural resources including but not limited to air, water and wildlife species that vary from or are in addition to those identified in the plan of development and/or right-of-way grant stipulations.

While Defenders and NRDC reached an agreement with EDF and are sending this letter withdrawing our protest, Defenders and NRDC continue to firmly advocate that the BLM adopt in its Record of Decision the reduced acreage Preferred Alternative project configuration (Alternative 7), as defined in the Final Environmental Impact Statement.

The company has agreed to incorporate above-referenced conditions (1-6) into a revised Plan of Development (the "POD") for the project and to submit the revised POD to the BLM for approval.

The agreement also provides that Defenders, NRDC and Desert Harvest Solar Project will rely on the BLM to enforce the conditions in the revised POD through their incorporation into the agency's project documents, including the Record of Decision.

Please indicate the BLM's consent to enforce the terms of the revised POD, including those specifically described herein, through the Record of Decision and the right of way grant for the Desert Harvest Solar Project by signing in the space provided below and returning a signed copy of this letter to Kim Delfino at [kdelfino@defenders.org](mailto:kdelfino@defenders.org) and Helen O'Shea at [hoshea@nrdc.org](mailto:hoshea@nrdc.org).

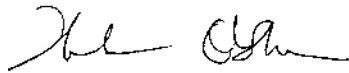
Upon receipt of your signature, Defenders and NRDC withdraws its protest of the Desert Harvest Solar Project and the proposed amendment to the California Desert Conservation Plan contained in its December 5, 2012, letter to Brenda Williams.

Thank you very much for your help in bringing this process to a successful conclusion.

Sincerely,



Kim Delfino  
California Program Director  
Defenders of Wildlife



Helen O'Shea  
Director, Western Renewable Energy Project  
Natural Resources Defense Council

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Jim Kenna, State Director, BLM

Date